

Russell A. Robinson, SBN 163937
Law Office of Russell A. Robinson
345 Grove Street, 1st Floor
San Francisco, CA 94102
Phone: 415.255.0462
Fax: 415.431.4526
rlaw345@gmail.com/rarcases@yahoo.com

Counsel for Plaintiff
EDGAR MELENDEZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDGAR MELENDEZ,
Plaintiff,

v.

JEANNE EMMETT, SUNNYVALE LIFE,
INC., dba LIFE'S GARDEN, POLO
PEREZ, and DOES 1 through 40,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF**
[Employment]

[Jury Trial Demanded]

COMES NOW PLAINTIFF EDGAR MELENDEZ AND STATES AS FOLLOWS:

JURISDICTION AND VENUE

1. This action arises under 42 USC §1981, presenting a federal question. This Court thus has jurisdiction of this matter and the pendent state law claims. Thus, Plaintiff files this action in this Court.

2. The claims alleged arose in and around the City of Sunnyvale, County of Santa Clara, State of California. Therefore, venue is proper in the Northern District of California.

PARTIES

3. Plaintiff Edgar Melendez is an adult male citizen of the United States residing in the State of California, City & Count of San Francisco. He is of Puerto Rican ancestry, and of mixed race. His ancestry includes person of African (black) origin. At all relevant times, Plaintiff has been over 40 years of age.

1 pounds. This duty was modified.

2 13. In January 2004, Emmett and Life's Garden changed the job description of
3 "painter-maintenance person." Melendez would now be required to maintain his pre-hire
4 commercial driver's license (Class B) in order to act as the facility's back-up bus driver.

5 14. While Melendez started at Life's Garden with a Class B license, because of his
6 industrial injury, he likely would not be able to pass a federal and state mandated drug test.
7 That is, the job-place injury required Melendez to take prescription painkillers which would
8 cause a positive test result, thereby disqualifying him from operating the facility bus. Emmett,
9 Life's Garden, Perez, and Does 1-40 were aware of this situation at all times.

10 15. Management at Life's Garden refused to hire or to train another back-up driver.
11 Having made some accommodation to Melendez's work duties in order to comply with its
12 statutory duty to permit him to remain employed, Life's Garden was now requiring Melendez to
13 take and to pass a federally mandated drug test.

14 16. To make this possible, Edgar Melendez was told in advance when drug tests
15 would occur by Emmett, Life's Garden, Perez, and each of them. He was then instructed not to
16 ingest prescription painkillers for a period of several days to allow opiates to leave his system.

17 17. Pursuant to the ongoing unlawful efforts by Life's Garden to circumvent both
18 federal and state safety laws as well as the California Labor Code as it relates to industrial
19 injuries, Melendez would in fact follow these dictates at great risk to his own safety and the
20 safety of potential passenger. On instructions he received from Life's Garden administration, in
21 the days before the test, he would cease taking opiates he had been legally prescribed for his
22 injuries and pain, and he would then pass the drug tests.

23 19. Of course, each time the drug tests had been administered and Edgar Melendez
24 tested "clean" – not positive – Melendez would resume the course of his painkillers and, on
25 those few occasions he had to operate the facility's bus, he technically would be under the
26 influence of those medications. While Melendez expressed some puzzlement and objection to
27 Life's Garden about this arrangement, he did not want to lose his job. Because he so rarely
28 was called upon to drive the facility bus, the risk posed to Life's Garden residents was minimal.

20. The same cannot be said about one particular issue Edgar Melendez raised again and again to Jeanne Emmett. That is the danger to the female residents at Life's Garden posed by Polo Perez. Perez has had a number of notorious, inappropriate, and dangerous liaisons with some of the elderly, female residents at Life's Garden. Melendez frequently criticized these inappropriate relationships, directly to Perez and to Emmett.

21. Perez's conduct in this regard, appeared and continues to appear to constitute elder abuse under Welfare & Institutions Code sections 15600, et seq. Perez often boasted about his sexual exploits with elderly, female residents at Life's Garden. He also proudly displayed some of the gifts these women had given to him or allowed to him to purchase through monetary largesse bestowed upon Perez. Despite frequent criticism of Perez's illegal – criminal – conduct, Director Emmett refused to take appropriate action. Thus, Life's Garden will be shown to have adopted and ratified the conduct of Perez.

22. Rather than deal with Perez's problematic behavior, Life's Garden – as with the wrongful handling of drug testing addressed above – focused on Melendez. Another employee should have been trained to operate the bus and to obtain the requisite Class B license on those rare occasions when necessary; and, Perez should have been counseled, warned, and, if need be, terminated. But, he has been allowed to continue to prey upon the vulnerable.

23. However, when Melendez received a driving under the influence citation, Life's Garden wasted no time in terminating him as of May 31, 2012. While he should never have been operating the bus in any event because of his medical condition and Life's Garden improper testing protocols, Melendez was terminated on the pretext of the suspension of his Class B license. This pretext ignored the fact that Melendez's commercial – Class B – license was not suspended at the time of his termination.

CAUSES OF ACTION

FIRST CAUSE OF ACTION – CAL. GOVT. CODE §12900, ET SEQ.

(As to Defendants Sunnyvale Life Inc., dba Life's Garden, and Does 1-40)

24. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

25. Under federal law, specifically 42 USC section 1981(a), "All persons within the

jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and . . . subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

26. “Make and enforce contracts” is defined in 42 USC section 1981(b) as to include “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” Plaintiff and Life’s Garden entered at one, relevant employment contract at the beginning of Plaintiff’s employment with Life’s Garden.

27. Plaintiff is informed that, as to Defendants Sunnyvale Life, Inc., dba Life’s Garden, Does 1-40, and each of them, each was acting in pursuant to official, *de facto* policies and in concert with one another when they injured and impaired Plaintiff, a man with African-American (black) ancestry. Each defendant was acting with the shared objective to injure Plaintiff and others like him. Violations included but were not limited to the following:

- a. Right to be free from discrimination based on race and/or protected activity;
- b. Right to make/enforce contract; and/or,
- c. Right to Equal Protection (full and equal benefit) of the Law.

28. Perez, Plaintiff’s direct supervisor, referred to Plaintiff as “Niger” during the time that Plaintiff worked at Life’s Garden.

29. Said rights are substantive guarantees under the United States Constitution.

30. Plaintiff was damaged in an amount according to proof at trial.

WHEREFORE, Plaintiff prays for relief as set forth below.

SECOND CAUSE OF ACTION – CAL. GOVT. CODE §12900, ET SEQ.

(As to all Defendants)

31. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

32. The employer is strictly liable for the supervisor’s actions regardless of whether

the supervisor was acting as the employer's agent. *See, e.g., State Dept. Of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1041, fn. 3. California Government Code (GC) section 12940(a) states in relevant part as follows: "It is an unlawful employment practice

(a) For an employer, because of the race, . . . , color, national origin, ancestry, physical disability, mental disability, medical condition, . . . , marital status, sex, gender, . . . , age, or sexual orientation of any person, to refuse to hire or employ the person . . . , or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

33. Clearly, the inability to operate the commercial bus was never a material issue because Melendez legally was disqualified from operating that bus when he suffered the crippling industrial injury in January 2003. Thus, Plaintiff was terminated in violation of sections 12900, et seq. Plaintiff was required to submit a claim to the California Department of Fair Employment & Housing (DFEH); Plaintiff timely submitted such a claim as to each of Defendant named herein. A right to sue notice was issued by the DFEH.

34. Plaintiff was damaged in an amount according to proof at trial.

WHEREFORE, Plaintiff prays for relief as set forth below.

THIRD CAUSE OF ACTION

Breach of the Implied Obligation of Good Faith and Fair Dealing

(All Defendants)

35. Plaintiff incorporates all previous allegations as though fully set forth below.

36. As alleged, Plaintiff suffered and continues to suffer losses caused by Defendants and each of them.

37. Defendants have been notified of the losses and the cause of the losses.

38. Defendants, unreasonably or without proper cause, failed to take corrective action as alleged above.

39. Plaintiff was harmed and damaged, and Defendants' conduct was a substantial factor in causing Plaintiff's harm and damage.

40. WHEREFORE, Plaintiff prays for relief as set forth below.

///

FOURTH CAUSE OF ACTION

Negligence

(All Defendants)

41. Plaintiff incorporates all previous allegations as though fully set forth below.

42. Defendants and each of them owed duties to Plaintiff. These included but were not limited to the following duties:

- (A) To investigate and to handle employment matters in a proper manner;
- (B) To examine the underlying bases for any claim of improper conduct; and,
- (C) To permit Plaintiff to continue working in his same position.

43. In doing, and, where applicable, failing to do the acts alleged above Defendants breached the duties owed to Plaintiff.

44. Plaintiff was harmed and damaged, and Defendants' conduct was a substantial factor in causing Plaintiff's harm and damage.

WHEREFORE, Plaintiff prays for relief as set forth below.

FIFTH CAUSE OF ACTION

Intentional/Negligent Misrepresentation

(All Defendants)

45. Plaintiff incorporates all previous allegations as though fully set forth below.

46. As alleged above, Plaintiff was told expressly and implicitly after his industrial injury he would remain employed so long as he continued doing as directed at Life's Garden.

47. Defendants, and each of them told Plaintiff would remain employed.

48. The facts, as recounted above, illustrate that defendants knew, or should have known, that the material facts which they made intending to induce Plaintiff to enter into the agreement(s) did in fact induce Plaintiff to place his trust with Defendants and to enter into the subject agreement.

49. The facts, as recounted above, illustrate that Defendants knew, or should have known, that the material facts which they made and which induced Plaintiff to enter the agreement were false. Defendants made representations but did not disclose facts which

1 materially qualify the facts disclosed, and rendered the disclosed facts likely to mislead. As
2 recounted, the facts were known and/or accessible only to Defendants, and Defendants knew
3 the material facts were not known to or reasonably discoverable by Plaintiff.

4 WHEREFORE, Plaintiff pray for relief as follows:

5 **PRAYER**

- 6 a. General damages according to proof, in the amount of \$300,000;
7 b. Special damages according to proof, in the amount of \$350,000;
8 c. Punitive and exemplary damages;
9 d. For costs of suit and for reasonable attorneys' fees under 42 USC §1988 and
10 Cal. Government Code §12940, et seq.;
11 e. For pre-judgment and post-judgment interest;
12 f. For an order requiring Defendants, all persons acting on behalf of Defendants,
13 and each of them, to do the following:
14 1. To reinstate Plaintiff retroactively, and to stop all harassing acts aimed at
15 Plaintiff, and others who may be affiliated with the plaintiff or similarly
16 2. To retrain each of the individually-named defendants regarding the
17 proper use of authority and the discipline process;
18 3. To terminate the individually-named defendant with a history of
19 committing similar acts of malfeasance.
20 g. Such other and further relief as the Court deems just and proper.

21 Date: December 31, 2013

/s/ Russell A. Robinson
By: Russell A. Robinson
Law Office of Russell A. Robinson
Counsel for Plaintiff
EDGAR MELENDEZ

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demands a jury trial, as is his right.

26 Date: December 31, 2013

/s/ Russell A. Robinson
By: Russell A. Robinson
Law Office of Russell A. Robinson
Counsel for Plaintiff
EDGAR MELENDEZ